SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 563

A. C. CARSTENS, THOMAS A. LANDRETH, V. R. HYSLOP, H. H. HIGGINS, AND THE WASHINGTON WATER POWER COMPANY, A CORPORATION,

Petitioners,

vs.

PUBLIC UTILITY DISTRICT NO. 1 OF LINCOLN COUNTY, A MUNICIPAL CORPORATION; JOHN LOME, A COMMISSIONER THEREOF; LOUIS SCHULTZ, A COMMISSIONER THEREOF; AND A. H. REILLY, A COMMISSIONER THEREOF.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions of the Courts Below.

Petitioners prevailed before the Superior Court of the State of Washington. A copy of the Memorandum Opinion of that Court now on file in the records of the Superior Court of the State of Washington for Lincoln County is appended hereto.

The Supreme Court of the State of Washington, the highest Court of the State, reversed the judgment of the Superior Court of the State of Washington. The majority opinion of the Supreme Court of the State of Washington is not yet officially reported, but is found printed in 108 Wash. Dec. 90, 111 Pac. (2d) 583.

Jurisdiction.

The jurisdiction of this Court is invoked under Title 28 U. S. C. A., Section 344 (b), Judicial Code, Sec. 237, Amended (R. S. secs. 690, 709; Mar. 3, 1911, c. 231, secs. 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448, sec. 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 937).

The date of the judgment of the Supreme Court of the State of Washington (the highest court of that State) is July 11, 1941.

A statement of the grounds upon which the jurisdiction of this Court is invoked is set forth in the preceding petition, pp. 3 to 12, to which statement reference is here made for the sake of brevity.

Cases believed by petitioners to sustain the jurisdiction of the Supreme Court of the United States and relied on for the exercise of said jurisdiction are:

Boston & Maine Railway Company v. *Arnburg*, 285 U. S. 234, 52 S. Ct. 336, 76 L. Ed. 729;

Union Bank & Trust Company v. *Phelps*, 288 U. S. 181, 53 S. Ct. 321, 77 L. Ed. 687.

Assignment of Error.

The Supreme Court of the State of Washington erred in entering judgment reversing the judgment of the Superior Court with directions to dissolve the injunction.

Petitioners, by their counsel, hereby specify the said assignment of error in its entirety as the assigned error intended to be urged.

Statement of the Case.

For the sake of brevity we refer to the statements in the preceding petition *re*: Summary Statement of the Matter Involved (Petition, pp. 2-3), and Nature of the Case and of the Rulings of the Court (Petition, pp. 4-5).

ARGUMENT.

The taking of property outside the territorial limits of the public utility district results in such property being removed from the tax rolls and increasing the tax burden of the citizens of the area affected, in violation of the Fourteenth Amendment.

Under Chapter 1, page 3, Laws of 1931, of the State of Washington, Remington's Revised Statutes, Sec. 11606, a public utility district is a "municipal corporation", and under the provisions of the Fourteenth Amendment to the Constitution of the State of Washington, property belonging to municipal corporations is exempt from taxation. When, therefore, a public utility district acquires by condemnation property now belonging to a private utility company in a city or county outside its boundaries, it automatically removes that property from the tax rolls and reduces the base upon which taxes may be levied. The affected areas are left with the alternative of operating on reduced budgets or increasing their tax levies. Either results, in our opinion, in denying them equal protection of the law or depriving them of property without due process of law.

As long as the process of transforming property from private to public ownership is confined to the Public Utility District and is controlled by the voters of such district, the same people are affected, and the result, whether good or bad, is self produced and equally applied, but here

the result is produced by the voters of the Public Utility District and is inflicted upon the citizens outside the limits of the district. The only protection against such discrimination is the Fourteenth Amendment to the Constitution, and the only agency that can apply it is this Court.

The construction given to Chapter 1, pages 12 and 13, Laws of Washington, 1931, Remington's Revised Statutes, Sec. 11610 (d), by the Supreme Court of the State of Washington, denies the equal protection of the law to citizens outside the limits of the public utility district who are forced to take service from a district in whose management and control they have no voice.

Chapter 1, page 7, Laws of 1931 of the State of Washington, Remington's Revised Statutes, Sec. 11608, provides that candidates for public utility district commissioner shall be elected by the voters of the public utility district.

Chapter 1, pages 12 and 13, Laws of 1931 of the State of Washington, Remington's Revised Statutes, Sec. 11610, subdivision (d), grants the public utility district acting by and through its commissioners, the power to sell and distribute within or without its limits "electric current for all uses, with full and exclusive authority to sell and regulate and control the use, distribution, rates, service, charges and price thereof, free from the jurisdiction and control of the director of public works and division of public utilities, in all things."

The result of the construction given Chapter 1, pages 12 and 13, Laws of 1931 of the State of Washington, by the decision of the case at bar, is to deny to petitioners herein, who are residents of an area outside of the territorial limits of the public utility district, the equal right to participate in the election of the public utility district commissioners who are responsible for the only electric service that will be

left available to them once the distribution lines of The Washington Water Power Company are condemned.

In order to appreciate the significance and importance of the questions involved in this case, it is necessary to review briefly the situation that exists in the State of Washington. Due to the construction of Bonneville and Grand Coulee dams, the agitation for public ownership of the electric light and power business has greatly increased in recent years. Prior to 1931 cities and towns had the right to engage in the electric business but there was no way by which public ownership could be extended to rural areas. In 1931 an act was passed (Chapter 1, Laws of 1931) by initiative, authorizing the creation of public utility districts. These districts could be county-wide in area, or could embrace less than a whole county, and were authorized, when properly formed, to engage in the electric and water utility business. They could acquire properties by purchase, construction or condemnation. They are governed by a board of three commissioners, elected by the qualified voters living within the territorial limits of the District. Therefore, three commissioners have full and complete power to manage and control the affairs of the district, fix the rates and charges, free from supervision or regulation by anyone.

Of course, county boundaries are not the natural operating boundaries of a utility system, but the law provided for the merger of districts, so that one or more counties or parts of counties could be joined together in one operating system. However, the formation of districts proceeded along county lines until twenty-nine out of the thirty-nine counties in the State now have county-wide public utility districts. These districts are now seeking to acquire physical properties by condemnation of properties of the private utilities.

They are not satisfied with the properties within their own territorial limits, but are extending into other coun-

ties and seeking to take property which to them seems desirable from an operating or revenue-producing standpoint.

The inescapable result of this is, that an operating utility is formed whose customers and service extends over a large area, but commissioners are elected by the inhabitants of a much smaller area. It seems patent that the customer who lives outside the area and is forced to accept the rates and service, without any recourse, save to forego the use of electricity, is denied the equal protection of the law under the Fourteenth Amendment, with the customer inside the public utility district who can express his dissatisfaction or approval thru the ballot box, or the customer of a private company which is regulated by the Department of Public Service. Further, when this property outside is acquired by condemnation against the wishes of both the owner and the customers, it is being taken without due process of law, in violation of the Fourteenth Amendment.

Conclusion.

We appreciate that in this brief we are neither permitted nor expected to argue the merits of the case, but only to present to the courts the reason for granting the Writ. We feel that since the plaintiffs here are citizens who have been denied the right to have a voice in the control of the Public Utility District that is forcing service upon them, that they are denied the equal protection of the laws; that this situation is not unique, but that the problem is becoming more complicated every day, as the Public Utility Districts expand; that soon there will be a hopeless conflict of overlapping authority and intermixing of properties and services that will be expensive, difficult, and may be impossible to unscramble.

As far as we can find, this question has never been before this Court, and due to the growth of this type of district in

Washington, Oregon and other States, a determinative statement of the rights of the districts and of the public as affected by the United States Constitution is a matter of no inconsiderable public concern at the moment. We believe, therefore, that the Writ of Certiorari should be granted.

Respectfully submitted,

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